

RESOLUTION NO. R-99-

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE A SUBLEASE AGREEMENT BETWEEN THE TOWN OF DAVIE AND BOYS CLUB OF BROWARD COUNTY, INC. DOING BUSINESS AS BOYS & GIRLS CLUB OF BROWARD COUNTY, FOR A SITE LOCATED AT FLAMINGO ELEMENTARY SCHOOL; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, it is the policy of the Town of Davie to develop, operate and maintain parks and community recreational facilities within the Town; and

WHEREAS, the Town is desirous of utilizing a portion of the school grounds of Flamingo Elementary School which would be subleased, in whole or in part, to a tax exempt organization to be used for community, cultural, educational and recreational purposes; and

WHEREAS, in order to meet the goals stated above, the Town has entered into a Lease Agreement with The School Board of Broward County, Florida to lease 4.4996 acres at Flamingo Elementary School; and

WHEREAS, to facilitate the construction and operation of a community, cultural, educational and recreational facility, the Town wishes to enter into a Sublease Agreement with Boys Club of Broward County, Inc. doing business as Boys & Girls Club of Broward County, to sublease 1.6690 acres at Flamingo Elementary School, a copy of which is attached hereto as Exhibit "A".

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA:

SECTION 1. That the Sublease Agreement between the Town of Davie, Florida and Boys Club of Broward County, Inc. doing business as Boys & Girls Club of Broward County, a copy of which is attached hereto as Exhibit "A", is hereby approved.

SECTION 2. The Mayor is hereby authorized to execute the agreement on behalf of the Town.

SECTION 3. This Resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS ____ DAY OF _____, 1999.

MAYOR/COUNCILMEMBER

ATTEST:

TOWN CLERK

APPROVED THIS ____ DAY OF _____, 1999.

TOWN OF DAVIE
OFFICE OF THE TOWN ADMINISTRATOR

MEMORANDUM

TO: Bob Rawls, Interim Town Administrator

FROM: Will Allen, Programs Administrator

DATE: February 24, 1999

SUBJECT: Sublease Agreement Between Town Of Davie And Boys And Girls Club For Facility At Flamingo Elementary School

The Town Council approved a revised lease agreement for the Flamingo Elementary School site with the School Board of Broward County at their February 16, 1999 meeting. The lease agreement calls for a portion of this area to be subleased to the Boys & Girls Club. The Town leased 4.4996 acres of which 1.6690 acres is to be subleased for construction and operation of the Boys & Girls building. Please place a resolution which follows up on the lease with the School Board and approves this sublease on the March 3, 1999 Town Council agenda.

The sublease agreement follows the terms of the lease already reached with the School Board such as the same legal description, insurance requirements, 40 year term, etc.

This agreement is needed to move forward with the construction of a Boys and Girls Club on the Flamingo Elementary School site.

SUBLEASE AGREEMENT

This Sublease Agreement made and entered into this ____ day of _____, 1999, by and between the TOWN OF DAVIE, a Florida municipal corporation (hereinafter referred to as "Town") and THE BOYS CLUB OF BROWARD COUNTY, INC. d/b/a THE BOYS AND GIRLS CLUB OF BROWARD COUNTY, organized as a not-for-profit corporation under the laws of the State of Florida, a Florida corporation (hereinafter referred to as "Provider").

WITNESSETH:

WHEREAS, the Town has entered into a forty (40) year lease agreement with the School Board of Broward County, Florida, relating to the lease by the Town of certain real property located in Davie, Florida, as more particularly described in the Lease Agreement attached hereto as Exhibit "A" (the "Lease"); and

WHEREAS, the Lease specifically allows for a sublease by the Town of certain designated areas within the leased property to the Boys & Girls Club of Broward County, which is a tax exempt organization under 501(c) of the Internal Revenue Code; and

WHEREAS, the Provider is agreeable to taking all necessary actions to design, construct and equip an approximate 20,000 square foot Boys and Girls Club facility on the subleased lands, said lands being more particularly described in Exhibit "B" attached hereto (the "Subleased Area"); and

WHEREAS, the Town is desirous of utilizing the services to be provided by the Provider as Provider of community, cultural, educational, and recreational facilities and services; and

WHEREAS, the Town and Provider believe that such an arrangement in the form of this Sublease Agreement will be of mutual benefit to all parties and will fulfill a great need in the Flamingo Elementary School area of the Town and that cooperation between the parties hereto will result in great public benefit to the citizens of the Town and will serve a valid public purpose.

NOW, THEREFORE, for and in consideration of the promises and benefits flowing through each party, the parties hereto do mutually agree as follows:

1. **Findings.** The above recitals are true and correct and are incorporated herein.

2. **Sublease to Provider.** The Town does hereby sublease to the Provider a portion of the leased properties under the Lease, as more particularly described on Exhibit "B" attached hereto, designated "Lease Area". Unless extended or terminated in accordance with the provisions hereof, the term of this Sublease is forty (40) years from the date of the execution of the Lease, said Lease being executed on the 2nd day of February, 1999. The Subleased Area is sublet at a yearly rental of one dollar (\$1.00) per year payable to the Town upon execution of this Sublease and thereafter on the 2nd day of February of each year of the Sublease Agreement. It is specifically understood and agreed that by mutual agreement of the parties hereto, the term of this Sublease may be shortened or extended, subject to the provisions of Sections 5 and 6, as set forth below.

3. **Purpose of Sublease.** The Subleased Area is to be used strictly for educational, cultural, and recreational purposes as a Boys and Girls Club facility to be operated and maintained by the Provider. It is acknowledged by the parties that during the term of this Sublease, the Subleased Area shall be under the sole and exclusive custody and control of the Provider and the programs of the Provider shall always take priority in determining the use of the Subleased Area. The Provider will, however, cooperate with the Town's Parks and Recreation Department in providing for mutually beneficial programs for the Town's residents at the Subleased Area.

4. **Cooperation with School Board.** Provider acknowledges that the Subleased Area is presently leased to the Town by the School Board and agrees that use of said Subleased Area by the Provider shall be limited and restricted so as not to conflict in any way with the use by the Board of the adjacent areas in accordance with the terms of the Lease Agreement attached hereto as Exhibit "A". Provider further agrees not to take any actions which would constitute a breach of the Lease or would cause the Town to breach the terms of the Lease. All actions of the Provider shall be consistent with the Town's obligations under the Lease.

5. **Breach or Default by Provider, Opportunity to Cure.**

Town agrees:

(a) That should the Provider breach this Sublease Agreement or be in

default of its terms, then prior to the Town claiming any right to relief as a result of said breach or default, Town shall give written notice to the Provider of a specific breach or default, and, thereafter, the Provider shall have thirty (30) days within which to cure the breach or default or such additional time to cure as may be approved by the Town Council, which extensions will not be unreasonably withheld so long as Provider is making a good faith effort to cure such defect and breach;

(b) In the event Provider is unable to cure any such breach or default after the cure period, including any extensions thereof, then the Town shall have the right to terminate this Sublease Agreement upon thirty (30) days written notice to the Provider and upon such termination, Provider shall vacate the Subleased Area and the buildings, improvements and equipment thereon shall automatically revert back to the Town subject only to the terms of the Lease Agreement between the Town and the School Board. In addition, the Town may, at its sole option, forthwith cancel and terminate this Sublease and it may enter the Subleased Area and improvements thereon as the agent of the Provider, by force or otherwise, without being liable in any way therefor, and re-let the premises with or without any furniture that may be therein, as the agent of the Provider, at such price and upon such terms and for such duration of time as the Town may determine, and receive the rent therefor or the Town, at its option can use the Subleased Area and improvements thereon for any other valid public purpose as the Town Council may determine. In the event of any such termination of the Sublease Agreement, the Town shall have no obligation or responsibility to reimburse Provider for any financial loss and Provider absolves and holds harmless the Town from any such obligation, responsibility or liability with respect to same; provided however, that at the time the Sublease is terminated or expires, Provider shall have the right to remove all equipment and furnishings exclusively owned by the Provider.

6. **Expiration of Sublease.** At the expiration of the term of this Sublease Agreement, unless such term is extended by the parties pursuant to a written amendment hereto and a written amendment extending the Lease, approved by the School Board, Provider will voluntarily and peacefully yield up to the Town the Subleased Area and all buildings, improvements, machinery, equipment, appurtenances and appliances placed or

installed on the Subleased Area and the same shall automatically revert to the Town, subject only to the terms of the Lease Agreement; provided, however, that at the time the Sublease is terminated or expires, Provider shall have the right to remove all equipment and furnishings exclusively owned by the Provider.

7. **Prohibition on Subletting and Assignment by Provider.** Provider shall not have the right to sublet all or any part of the Subleased Area or the facilities thereon, or to assign all or any part of the Subleased Area or the facilities thereon, without the express consent of the Town Council.

8. **Taxes and Utilities.** Provider hereby agrees to be responsible for and shall timely pay for all utilities and all applicable taxes in a timely manner in connection with its use of the Subleased Area throughout the term of this Sublease. The parties recognize that the Subleased Area is exempt from property taxes in accordance with Florida law and Town and Provider shall make all necessary filings to maintain such exemptions. Provider shall maintain such property tax exemptions by continuing to use the Subleased Area to serve a “valid public purpose” within the meaning of Chapter 196, Florida Statutes.

9. **Provider’s Acceptance of Subleased Area; Provider’s Obligation to Construct Project and to Repair and Maintain Same.** The Provider hereby accepts the Subleased Area and any improvements currently thereon in their “as is” condition at the beginning of this Sublease. Town makes no representations or warranties to Provider as to the condition of the Subleased Area or as to their habitability or fitness for a particular use or purpose and Provider assumes all risk with respect to same. Provider agrees to maintain the Subleased Area in a safe and sanitary and clean condition throughout the term of this Sublease. Provider agrees to improve the Subleased Area and to construct thereon a Boys and Girls Club facility of approximately 20,000 square feet in size. Provider agrees to make said improvements in accordance with applicable Town codes and to meet all applicable permit and inspection requirements. Provider will put forth every effort in good faith to make the necessary improvements to the Subleased Area in order to have the Project open to the public on an expedited basis but in no event later than 12 months from the issuance

date by the Town of the valid building permit for the Project, unless such time period is extended by the Town Council. Any and all construction related activity shall be required to utilize S.W. 130th Avenue for access to the Subleased Area. Any and all contractors utilized by the Provider shall be required to have all its employees, subcontractors or agents who will be entering onto the School Board property as a result of this Sublease to wear, while on School Board property, a photo identification badge issued by the School Board in accordance with School Board standardized operating procedures. Provider shall fully comply with the provisions of paragraph 7(a) of the Lease. Failure of Provider to meet its obligations under this Section 9 shall constitute a material default of this Sublease.

Provider agrees to keep the Subleased Area and grounds and facilities thereon clean, sanitary and free from trash and debris, and also the grounds shall be neatly landscaped and mowed to prevent unsightly accumulation of weeds and other vegetation.

10. **Liability Insurance.** The Provider shall maintain tenant's liability and property and fire insurance covering the Subleased Area and its improvements at least in the amount of the replacement value of the building and improvements of the Subleased Area. The Provider shall also maintain general liability insurance in the amount of One Million Dollars (\$1,000,000.00). Said insurance policies shall name the Town and the School Board of Broward County, Florida, as additional insureds and the annual premiums shall be paid for by Provider in a timely manner. Certificates of insurance shall be forwarded to the Town's Risk Manager and to the School Board. Provider shall be obligated to maintain such insurance coverages at all times throughout the term of this Sublease. Provider shall not allow said policies to lapse during the term of this Sublease. The Town and the School Board shall be given thirty (30) days written notice of any cancellation or modification of such policies. Failure of Provider to maintain such insurance policies shall constitute a material default of this Sublease.

11. **Surety Bonds.** In addition to the insurance as detailed in paragraph 10 above, with respect to any construction projects undertaken on the Subleased Area, the Provider shall require the contractor to furnish a surety bond which guarantees the completion of any construction project undertaken on the Subleased Area and the performance of the work necessary to complete the project as well as for payment of all suppliers,

materialmen, laborers or subcontractors employed to provide services to complete the project. Provider agrees to deliver a copy of the surety bond to the Town no later than thirty (30) days prior to the commencement of construction.

12. **Personal Property.** All personal property placed, moved or displayed in the Subleased Area shall be at the risk of the Provider and the respective owner thereof, and the Town shall not be responsible or liable for any damage to said personal property, arising from an Act of God or from the bursting or leaking of water pipes, or from any act of negligence of Provider or invitee or occupants of the Subleased Area or of any other person whomsoever, or because of any act of theft or vandalism by third parties.

13. **Prohibited Use of Subleased Area.** The Provider hereby further covenants and agrees with the Town that the Subleased Area, the Project and any other improvements thereon, shall be used only for the proper, legitimate and lawful purposes as set forth in Section 3 hereof, and that the Provider will not use or cause to be used or permit any person or party to use in any manner whatsoever, the Subleased Area, the Project or any other improvement thereon or any portion thereof, for any use or purpose in contravention of Section 3 hereof, or in contravention of the laws, ordinances or regulations of the United States or the State of Florida, or the Town of Davie or any other lawful authority having jurisdiction thereover.

14. **Town's Right to Inspect Premises.** The Town, acting through the Town Administrator or his designee, shall have the right to enter the Subleased Area and improvements thereon during all reasonable hours, to examine the same and to make such reports to the Town Council and Provider on the condition of the Subleased Area and to require Provider to make such repairs, or alterations as may be deemed necessary in order to ensure the public's safety and preservation thereof.

15. **No Waiver of Rights.** The rights of the Town under this Sublease Agreement shall be cumulative, and failure on the part of the Town to exercise promptly any rights given hereunder shall not operate to forfeit or waive any of the Town's rights.

16. **Notice.** It is understood and agreed between the parties hereto that written notice addressed to Provider's President or Executive Director mailed by certified mail, return receipt requested, or hand-delivered to the Provider at 4901 N. Federal Highway, Ft.

Lauderdale, Florida 33308, shall constitute sufficient notice to the Provider and written notice mailed by certified mail, return receipt requested, or hand-delivered to the Office of the Town Administrator, 6591 Orange Drive, Davie, Florida 33314, with a copy to the Office of the Town Attorney, 6591 Orange Drive, Davie, Florida 33314, shall constitute sufficient notice to the Town, to comply with the terms of this Sublease Agreement.

17. **Legal Fees of Prevailing Party.** In the event it shall be necessary for either of the parties to bring legal action for collection in a Court of Law or otherwise retain legal counsel to enforce this Sublease Agreement or any provision hereof or any rights established hereunder, including, but not limited to the enforcement of Provider's obligations hereunder, right to occupancy and possession and to enforce the Provider's obligation to vacate upon termination or default, then the prevailing party in any such action shall be entitled to reimbursement from the non-prevailing party of their reasonable attorney's fees and court costs incurred in connection therewith.

18. **Compliance with Applicable Laws.** The Provider shall promptly execute and comply with all statutes, ordinances, rules, orders, regulations and requirements of the Federal, State and City Government and of any and all their departments and bureaus applicable to the Subleased Area and any improvements thereon, except as otherwise limited herein. Provider shall also be and remain in compliance with all rules, regulations and ordinances of the Town of Davie and any other governmental entity or agency established for protection against or prevention of fires.

19. **Indemnity and Hold Harmless.** The Provider shall indemnify, save harmless and defend the Town, its officers, employees and agents from and against all claims, suits, actions, damages or causes of action arising during the term of this Sublease Agreement for any personal injury, loss of life or damage to property sustained by reason or as a result of the use of the Subleased Area and improvements thereon for which this Sublease Agreement is entered into or its agents, employees, invitees, and all other persons, and from and against any orders, judgments or decrees, which may be entered thereto, and from and against all costs, attorney's fees, expenses and liabilities incurred in or by reason of the defense of any such claim, suit or action, and the investigation thereof. Nothing in this Sublease shall be deemed to affect or waive the rights, privileges and immunities of

the Town, or the Provider, as are set forth in Florida Statutes, including Section 768.28.

20. **Water Damage.** It is expressly agreed and understood by and between the parties to this Agreement, that the Town shall not be liable for any damage or injury by water, which may be sustained by the Provider or any other person or for any other damage or injury resulting from the carelessness, negligence, or improper conduct on the part of the Provider or its agents, or employees, or by reason of the breakage, leakage, or obstruction of the water, sewer or soil pipes, or other leakage in or about the Subleased Area and buildings and improvements thereon.

21. **Abandonment of Premises.** If the Provider shall abandon or vacate the Subleased Area before the end of the term of this Sublease, or shall be in default without curing same for more than 30 days after notice of such default, unless said cure period is extended by the Town, then the Town may, at its sole option, forthwith cancel and terminate this Sublease or it may enter the Subleased Area and improvements thereon as the agent of the Provider, by force or otherwise, without being liable in any way therefor, and re-let the premises with or without any furniture that may be therein, as the agent of the Provider, at such price and upon such terms and for such duration of time as the Town may determine, and receive the rent therefor or the Town, at its option can use the Subleased Area and improvements for any other valid public purpose as the Town Council may determine.

22. **Successors and Assigns.** This Sublease shall bind the Town and its assigns or successors, and the Provider and its administrators, legal representatives, or successors, if any, as the case may be.

23. **Entire Agreement.** This Sublease Agreement, together with the Exhibits hereto, shall constitute the entire agreement between the parties.

24. **Florida Law Governs.** This Sublease Agreement shall be enforced and interpreted under the laws of the State of Florida. Venue for all legal actions shall be in Broward County. Both parties waive their rights to a jury trial.

25. **Captions/Counterparts.** The captions contained in this Sublease Agreement are inserted only as a matter of convenience and in no way define, limit or extend the scope or intent of this Agreement or any provision hereof. This Sublease may be executed

in one or more counterparts, each of which when executed by a party hereto shall constitute an original.

IN WITNESS WHEREOF, the parties hereto have duly executed this Sublease Agreement on the day and year first above written.

Attest: **TOWN OF DAVIE**, a municipal corporation of the State of Florida

Gail Reinfeld, Town Clerk

By _____
Harry Venis, Mayor

Witnesses: **BOYS CLUB OF BROWARD COUNTY, INC. d/b/a The Boys and Girls Club of Broward County**

Print Name: _____

By _____

Print Name: _____

(Print Name & Title)

ATTEST:

By _____

(Print Name & Title)